

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARC HERMANN,

Plaintiff,

- against -

OXYGEN MEDIA, LLC.

Defendant.

Docket No. 1:18-cv-1990

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Marc Hermann (“Hermann” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Oxygen Media, LLC (“Oxygen” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of medical examiners removing the body of Gina O’Brien who plunged to her death from a NYC apartment, owned and registered by Hermann, a New York based professional photographer. Accordingly, Hermann seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and/or transacts Oxygen in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Hermann is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 9281 Shore Road #308, Brooklyn, New York 11209.

6. Upon information and belief, Oxygen is a foreign limited liability company duly organized and existing under the laws of the State of Delaware, with a place of Oxygen at 30 Rockefeller Plaza, New York, New York 10112. Upon information and belief, Oxygen is registered with the New York State Department of Corporations to do Oxygen in New York. At all times material, hereto, Oxygen has owned and operated a website at the URL: [www.Oxygen.com](http://www.Oxygen.com) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Hermann photographed medical examiners removing the body of Gina O’Brien who plunged to her death from a NYC apartment (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Hermann is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph is registered with the United States Copyright Office and given registration number VA 2-075-569.

#### **B. Defendant’s Infringing Activities**

11. On October 31, 2017, Oxygen ran an article on the Website entitled *Woman Visiting NYC Jumps Off 26-Story Roof*. The article prominently featured the Photograph. See <http://www.oxygen.com/blogs/woman-visiting-nyc-jumps-off-26-story-roof>. A screen shot of the article with the Photograph is attached hereto as Exhibit B.

12. Oxygen did not license the Photograph from Plaintiff for its Website, nor did Oxygen have Plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST OXYGEN)**  
**(17 U.S.C. §§ 106, 501)**

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Oxygen infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Oxygen is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Oxygen have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Oxygen be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
March 6, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz  
Richard P. Liebowitz  
11 Sunrise Plaza, Suite 305

Valley Stream, New York  
Tel: 516-233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Marc Hermann*